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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/761,340	01/16/2001	Neil E. Morrow	KMOR116839	5973

26389 7590 05/06/2002

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EXAMINER

KAVANAUGH, JOHN T

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 05/06/2002

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/761,340

Applicant(s)

MORROW ET AL.

Examiner

Ted Kavanaugh

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 57-96 is/are pending in the application.
- 4a) Of the above claim(s) 62-64, 66, 67, 70, 71, 73-83, 91, 92 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 57-61, 65, 68, 69, 72, 84-90 and 93-96 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Claims 62-64,66,67,70-71,73-83,91 and 92 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 5.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 19, 2002 has been entered.

Specification

2. The specification is objected to as failing to provide clear support for the claim terminology. 37 CFR § 1.75(d)(1) requires that terms and phrases used in the claims find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description. Specifically, the term and/or phrase "connection means for attaching..." (claim 84); "means for adjusting..." (claim 84); "redirecting means for changing" (claim 85); and "means for adjusting..." (claim 85) does not appear in the specification.

Claim Rejections - 35 USC § 112

3. Claims 58,68,69,84 and 85 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The following phrase(s)/term(s) "connection means for attaching..." (claim 84); "means for adjusting..." (claim 84); "redirecting means for changing" (claim 85); and "means for adjusting..." (claim 85) are indefinite because the element(s) or step(s) are not defined in the specification by corresponding structure, material or acts and equivalents thereof, see 35 USC 112, sixth paragraph, and therefore it is not clear what is meant by that language. Therefore, the examiner is unable to determine what structure or equivalent structure is encompassed by such language. Since there is no corresponding structure, etc. in the specification to define the means or step plus function limitation, an equivalent will be deemed to be any element that is capable of performing the specified function.

Claim 58 is unclear and indefinite because the cable in the elected embodiment doesn't have "ends" but is one continuous cable.

In claims 68 and 69, "said region" lacks proper antecedent basis and is therefore indefinite.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 57-61,65,68,69,72,84-90 and 93-96 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4922633 (Sartor).

Sartor teaches a ski boot (see the embodiments shown in figures 1-10 and 11-19) substantially as claimed including a flexible highback portion (rear quarter), medial and lateral side cables members (cables 15,52,61) wherein the forward ends of the cable are located on the medial side of the boot (the cables extend on both sides of the boot and therefore would include the medial side of the boot), and a tension adjustment member comprising an engaging arm (lever) including plural engaging members (best shown in figure 2). With regard to the cable being a continuous cable, the embodiment shown in figures 7 and 10 has a continuous cable. The cables (15,52,61) are all attached at one general position thereon the forward portion of the boot. Some of the cables are attached at more than one general position but the claims do recite the that cable is attached at “only” one general forward position. Regarding the cable being attached to the shell, see column 5, lines 60-62.

Regarding claims 93-96, the cable system of Sartor will inherently cause the forward flexure of the boot. When the wearer leans forward the cable system will cause the forward flexure of the boot.

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6. Claims 57-61,65,68,69,72,84-90 and 93-96 rejected under 35 U.S.C. 102(b) as being anticipated by US 5060403 (Battistella).

Battistella teaches several embodiments of a ski boot having structure substantially as claimed including causing forward flexing of the boot (see col. 4, lines 27-31 and col. 4, lines 64-68. The cables extend on both sides of the boot and therefore would include the medial side of the boot. Battistella also teaches a tension adjustment member (5,119,219, etc). The cables are all attached at one general position thereon the forward portion of the boot. Also see figure 7 which shows the cable attached to the medial side of the boot about guide 207 of the shell.

7. Claims 57-61,65,68,69,72,84-90 and 93-96 rejected under 35 U.S.C. 102(b) as being anticipated by US 4360979 (Spademan).

Spademan teaches a ski boot having structure substantially as claimed including causing forward flexing of the boot (see col. 5, lines 42-49). Spademan also teaches a tension adjustment member (buckle). The cables are all attached at one general position thereon the forward portion of the boot. Also see figure 1 which shows the cable attached to the medial side of the boot about the buckle. The cable extends on both side of the boot.

Conclusion

Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111. Moreover, "The prompt development of a clear issue requires that the replies of the applicant meet the objections to and rejections of the claims. Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06" MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

8. Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (703) 872-9302 and After Finals to (703) 872-9303 (FORMAL FAXES ONLY). If the previous Fax numbers are not working use any of the following numbers (703) 305-3579 or (703) 305-3580 or (703) 305-3590. Applicants who authorize charges to a PTO deposit account may also use it for filing papers that require a fee. Please identify Examiner Ted Kavanaugh of Art Unit 3728 at the top of your cover sheet.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 306-5648, email CustomerService3700@uspto.gov.

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Ted Kavanaugh whose telephone number is (703) 308-1244. The examiner can normally be reached on 6AM - 4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached at (703) 308-2672.

Other helpful telephone numbers are listed for applicant's benefit.

Allowed Files & Publication	(703) 305-8322
Assignment Branch	(703) 308-9287
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/8335
Fee Increase Questions	(703) 305-5125
Intellectual Property Questions	(703) 305-8217
Petitions/Special Programs	(703) 305-9282

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Terminal Disclaimers

(703) 305-8408

If the information desired is not provided above, or has been changed, please do not call the examiner (this is the latest information provided to him) but the general information help line below.

Information Help line
Internet PTO-Home Page

1-800-786-9199
<http://www.uspto.gov/>


Ted Kavanaugh
Primary Examiner
Art Unit 3728

TK
May 2, 2002

Attachment for PTO-948 (Rev. 03/01, or earlier)
6/18/01

The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

1. Correction of Informalities -- 37 CFR 1.85

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made other than correction of informalities, unless the examiner has approved the proposed changes.

Timing of Corrections

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.